

FILED

2012 OCT 31 PM 1:24

CLERK U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
RIVERSIDE

BY: _____

1 Tammy Hussin (Bar No. 155290)
2 Lemberg & Associates, LLC
3 6404 Merlin Drive
4 Carlsbad, CA 92011
5 Telephone (855) 301-2100 ext. 5514
6 thussin@leberglaw.com

7 Lemberg & Associates, LLC
8 1100 Summer Street
9 Stamford, CT 06905
10 Telephone: (203) 653-2250
11 Facsimile: (203) 653-3424

12 Attorneys for Plaintiff,
13 Melvin Wisner

14 UNITED STATES DISTRICT COURT
15 CENTRAL DISTRICT OF CALIFORNIA
16 EASTERN DIVISION

17 Melvin Wisner,

18 Plaintiff,

19 vs.

20 NCC Business Services, Inc.; and DOES
21 1-10, inclusive,

22 Defendants.

23 Case No.:

24 **COMPLAINT FOR DAMAGES**
25 **1. VIOLATION OF FAIR DEBT**
26 **COLLECTION PRACTICES ACT,**
27 **15 U.S.C. § 1692 ET. SEQ;**
28 **2. VIOLATION OF FAIR DEBT**
COLLECTION PRACTICES ACT,
CAL.CIV.CODE § 1788 ET. SEQ.

JURY TRIAL DEMANDED

COMPLAINT FOR DAMAGES

1 For this Complaint, the Plaintiff, Melvin Wisner, by undersigned counsel, states
2 as follows:
3

4 **JURISDICTION**

5 1. This action arises out of Defendants' repeated violations of the Fair Debt
6 Collection Practices Act, 15 U.S.C. § 1692, et seq. ("FDCPA"), and the invasions of
7 Plaintiff's personal privacy by the Defendants and its agents in their illegal efforts to
8 collect a consumer debt.
9

10 2. Supplemental jurisdiction exists pursuant to 28 U.S.C. § 1367.
11

12 3. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b), in that
13 Defendants transact business here and a substantial portion of the acts giving rise to
14 this action occurred here.
15

16 **PARTIES**

17 4. The Plaintiff, Melvin Wisner (hereafter "Plaintiff"), is an adult individual
18 residing in Corona, California, and is a "consumer" as the term is defined by 15
19 U.S.C. § 1692a(3).
20

21 5. Defendant, NCC Business Services, Inc. ("NCC"), is a Florida business
22 entity with an address of 3733 University Boulevard West, Jacksonville, Florida
23 32217-2103, operating as a collection agency, and is a "debt collector" as the term is
24 defined by 15 U.S.C. § 1692a(6).
25
26
27
28

1 6. Does 1-10 (the “Collectors”) are individual collectors employed by NCC
2 and whose identities are currently unknown to the Plaintiff. One or more of the
3 Collectors may be joined as parties once their identities are disclosed through
4 discovery.
5

6 7. NCC at all times acted by and through one or more of the Collectors.
7

8 **ALLEGATIONS APPLICABLE TO ALL COUNTS**
9

10 8. Plaintiff allegedly incurred financial obligations (collectively referred to
11 as the “Debts”) to original creditors (the “Creditor”).
12

13 9. The Debts arose from services provided by the Creditor which were
14 primarily for family, personal or household purposes and which meets the definition
15 of a “debt” under 15 U.S.C. § 1692a(5).
16

17 10. The Debts were purchased, assigned or transferred to NCC for collection,
18 or NCC was employed by the Creditor to collect the Debts.
19

20 11. NCC attempted to collect the Debts and, as such, engaged in
21 “communications” as defined in 15 U.S.C. § 1692a(2).
22

23 12. Within the last year, NCC contacted Plaintiff in an attempt to collect the
24 Debts.
25

26 13. At all times herein mentioned, NCC contacted Plaintiff by calling him on
27 his cellular telephone.
28

1 14. NCC contacted Plaintiff's cellular telephone number, using an automated
2 telephone dialer system with an artificial or prerecorded voice (hereafter "Robocalls").
3

4 15. During the initial conversation and during each conversation thereafter,
5 Plaintiff informed NCC that he did not believe he owed the Debts and requested a
6 written information regarding the Debts.
7

8 16. During the initial conversation and during each conversation thereafter,
9 Plaintiff informed NCC that no payment will be made until he received written
10 information regarding the Debts.
11

12 17. During the initial conversation and during each conversation thereafter,
13 Plaintiff further instructed NCC to cease all calls to his cellular telephone.
14

15 18. During the initial conversation and during each conversation thereafter,
16 NCC failed to identify itself to Plaintiff and failed to advise Plaintiff that the call was
17 an attempt to collect a debt and all information obtained would be used for that
18 purpose.
19

20 19. NCC failed to provide Plaintiff with a written notice as requested by
21 Plaintiff and required by law.
22

23 20. On one occasion, in response to Plaintiff's requests to cease
24 communications, NCC stated that Plaintiff should "get used to it" and that NCC
25 would not stop calling Plaintiff until such time as the Debts were paid.
26
27
28

1 28. The Defendants placed calls to the Plaintiff without disclosing the
2 identity of the debt collection agency, in violation of 15 U.S.C. § 1692d(6).
3

4 29. The Defendants failed to inform the consumer that the communication
5 was an attempt to collect a debt, in violation of 15 U.S.C. § 1692e(11).
6

7 30. The Defendants used unfair and unconscionable means to collect a debt,
8 in violation of 15 U.S.C. § 1692f.

9 31. The Defendants failed to send Plaintiff an initial letter within five days of
10 its initial contact with Plaintiff as required by law, in violation of 15 U.S.C. §
11 1692g(a).
12

13 32. The foregoing acts and omissions of the Defendants constitute numerous
14 and multiple violations of the FDCPA, including every one of the above-cited
15 provisions.
16

17 33. The Plaintiff is entitled to damages as a result of the Defendants'
18 violations.
19

20 **COUNT II**
21 **VIOLATION OF THE ROSENTHAL FAIR DEBT COLLECTION**
22 **PRACTICES ACT, Cal. Civ. Code § 1788 et seq.**

23 34. The Plaintiff incorporates by reference all of the above paragraphs of this
24 Complaint as though fully stated herein.
25
26
27
28

1 43. Without prior consent and/or following revocation of consent, the
2 Defendants contacted the Plaintiff by means of automatic telephone calls or
3 prerecorded messages at a cellular telephone in violation of 47 U.S.C. §
4 227(b)(1)(A)(iii).
5

6 44. The foregoing acts and omissions of the Defendants constitute numerous
7 and multiple violations of the Telephone Consumer Protection Act, including every
8 one of the above-cited provisions.
9

10 45. The Plaintiff is entitled to damages as a result of the Defendants'
11 violations, including treble damages for continuing to call Plaintiff at an excessive
12 despite repeated requests to stop the calls.
13

14
15 **COUNT IV**
16 **INVASION OF PRIVACY BY INTRUSION UPON SECLUSION**

17 46. The Plaintiff incorporates by reference all of the above paragraphs of this
18 Complaint as though fully stated herein.

19 47. The Restatement of Torts, Second, § 652B defines intrusion upon
20 seclusion as, "One who intentionally intrudes...upon the solitude or seclusion of
21 another, or his private affairs or concerns, is subject to liability to the other for
22 invasion of privacy, if the intrusion would be highly offensive to a reasonable person."
23

24 48. California further recognizes the Plaintiff's right to be free from
25 invasions of privacy, thus the Defendants violated California state law.
26
27
28

1 49. The Defendants intentionally intruded upon Plaintiff's right to privacy by
2 continually harassing Plaintiff with the above referenced telephone calls.

3
4 50. The telephone calls made by the Defendants to Plaintiff were so
5 persistent and repeated with such frequency as to be considered, "hounding the
6 plaintiff," and, "a substantial burden to her existence," thus satisfying the Restatement
7 of Torts, Second, § 652B requirement for an invasion of privacy.
8

9 51. The conduct of the Defendants in engaging in the illegal collection
10 activities resulted in multiple invasions of privacy in such a way as would be
11 considered highly offensive to a reasonable person.
12

13 52. As a result of the intrusions and invasions, the Plaintiff is entitled to
14 actual damages in an amount to be determined at trial from the Defendants.
15

16 53. All acts of the Defendants and its agents were committed with malice,
17 intent, wantonness, and recklessness, and as such, the Defendants are subject to
18 punitive damages.
19

20 **PRAYER FOR RELIEF**

21 WHEREFORE, the Plaintiff prays that judgment be entered against the
22 Defendants:
23

24 A. Actual damages pursuant to 15 U.S.C. § 1692k(a)(1) against the
25 Defendants;
26
27
28

- 1 B. Statutory damages of \$1,000.00 pursuant to 15 U.S.C. §1692k(a)(2)(A)
2 against the Defendants;
3
4 C. Costs of litigation and reasonable attorney's fees pursuant to 15 U.S.C.
5 § 1692k(a)(3) against the Defendants;
6
7 D. Actual damages pursuant to Cal. Civ. Code § 1788.30(a);
8
9 E. Statutory damages of \$1,000.00 for knowingly and willfully committing
10 violations pursuant to Cal. Civ. Code § 1788.30(b);
11
12 F. Statutory and treble damages pursuant to 47 U.S.C. § 227(b)(3)(B) &
13 (C);
14
15 G. Actual damages from the Defendants for the all damages including
16 emotional distress suffered as a result of the intentional, reckless, and/or
17 negligent FDCPA violations and intentional, reckless, and/or negligent
18 invasions of privacy in an amount to be determined at trial for the
19 Plaintiff;
20
21 H. Punitive damages; and
22
23 I. Such other and further relief as may be just and proper.

24 **TRIAL BY JURY DEMANDED ON ALL COUNTS**
25
26
27
28

1 DATED: October 26, 2012

TAMMY HUSSIN

2 

3 By: _____

4 Tammy Hussin, Esq.

5 Lemberg & Associates, LLC

6 Attorney for Plaintiff, Melvin Wisner

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28